(55) (2)

Cr. Appeal :- 1/11/97

/- APPEAL OF PRISONER -/

No. 492 Name पोडियामी लिंगा

Father's Name हिड़मा Resident ग्राम - तोयलंका थाना - दन्तेवाड़ा, बस्तर

Age 25 Sentenced to आजीवन कारावास on 16.8.96

Under Section 302 I. P. C. by व्यव. न्याया. जगदलपुर, बस्तर

S.T. No. 71/95

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practicner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- Nil.
2. Date of which copy received :- 16.8.96
3. Date on which appeal sent :- 30.8.96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 492 Name पोडियामी लिंगा पिता हिड़मा

Continued in पिता Jail जगदलपुर, बस्तर

No. 399 / अपराध / 96 Dated 30/8/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur. together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

Superintendent Central/Distt/Sub-Jail.

Date of receipt in C.J.M's Office. 2/9/96

Date of receipt of record to accompany. Nil

Memo of Appeal of the Appellate Court. Nil

No. 17(4) dated 16/9/96

Forwarded to the H'ble Sessions Judge Jagdalpur

C.J.MAGISTRATE.

Date of receipt in Applieate Court:

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(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Appeal No. 141/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

08.03.2006

Dr. Shailesh Ahuja, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J

By this appeal under Section 374 (2) of the Cr.P.C. appellant Podiyami Linga has questioned the legality & correctness of judgment of conviction and order of sentence dated 16.8.1996 passed by learned Sessions Judge, Jagdalpur in S.T.No.71/95, whereby learned Sessions Judge after holding the accused/appellant guilty for committing murder of Podiyami Pandu convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that Podiyami Dorba (PW-4) lodged the report (Ex.P-5) in the Police Station Dantewada to the effect that in the evening of 29.9.1994, the hen of accused Podiyami Linga entered in the kitchen garden of deceased Pandu and started damaging the crop of deceased Pandu, on which Pandu asked the accused Linga as to why he is not keeping the hen in his house and some altercation took place between them. The accused went inside his house, brought an axe and attacked Pandu with the axe thrice on

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -25-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his head as a result of which Pandu received injuries on the vital part of the body and succumbed to the injuries sustained by him on the spot. After registering the case, Investigating Officer left for the scene of occurrence and after giving notice to the Panchas prepared the Panchnama (Ex.P-1) of the body of deceased Pandu. He took into possession the blood stained soil and plain soil under Ex.P-2, weapon of offence i.e. axe under Ex.P-7 and sent the body of deceased for postmortem examination to Primary Health Centre, Dantewada, where Dr. K.L. Suryavanshi (PW-6) conducted the postmortem examination on the body of deceased and prepared the postmortem report (Ex.P-7).

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, Dantewada, who in turn committed the case to learned Sessions Judge, Jagdalpur for trial, where the prosecution examined seven witnesses in order to establish the charge against the accused/appellant. On the other hand, learned Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.

Learned Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Dr. Shailesh Ahuja, Advocate for accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Homicidal death of deceased Podiyami Pandu is not in dispute.

As far as involvement of the accused/appellant in crime in question is concerned, the crime was witnessed by Sodi Baman (PW-3), son of the deceased, who has stated in his evidence that on the fateful day in the evening at about 4 to 5 p.m. the hen of accused Linga were damaging the paddy crop of deceased Pandu, on which he asked Linga as to why he is not keeping the hen in his control, as they are damaging his crop. Hearing this Linga went inside the house, brought an axe and attacked Pandu with the axe on his head three times as a result of which Pandu succumbed to the injuries sustained by him. In the cross-examination of this witness the defence has not been able to elicit any thing, which makes the evidence of this witness unreliable or untrustworthy. Moreover the evidence of this stands corroborated by the evidence of Dr. K.L. Suryavanshi (PW-6), who has stated in his evidence that there were three incised wounds on the head of deceased as a result of which skull was fractured into pieces, brain was also ruptured, brain material was coming out from the injuries and death was homicidal in nature.

In view of the above evidence of Sodi Baman (PW-3) and Dr. K.L. Suryavanshi (PW-6), the involvement of the accused/appellant in crime in question is established.

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellant argued that the offence against the accused/appellant does not travel beyond Section 304 Part-II of the Indian Penal Code.

On the other hand, learned Additional Public Prosecutor for the State supported the impugned judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence, record as well as judgment of the trial court.

Perusal of evidence of Sodi Baman (PW-3) reveals that deceased Pandu asked the accused Linga to keep the hen in his control, as they were damaging his crop. Hearing this, without any rhyme or reason, the accused went inside the house, brought the axe and attacked thrice on the head of Pandu as a result of which the skull bone of Pandu was turned into pieces, brain material started coming out and he died spontaneously. Therefore, the manner in which the accused assaulted the deceased on his vital part of the body and with the danger weapon like axe, it can safely be inferred that the accused assaulted the deceased with the intention to cause his death.

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial court. The appeal being devoid of merit is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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